

1
2 Brian J. Waid
3 Waid Law Office
4 4847 California Ave. SW, Suite 100
5 Seattle, Washington 98116
6 (206) 388-1926
7 Attorney for Plaintiffs

8
9 **IN THE UNITED STATES DISTRICT COURT FOR THE**
10 **WESTERN DISTRICT OF WASHINGTON**

11 **RHEGAN PATRICK and**
12 **GRIFFIN PATRICK,**

13 **Plaintiffs,**

14 **vs.**

15 **JAMES S. ROGERS d/b/a LAW**
16 **OFFICES OF JAMES S. ROGERS**

17 **Defendant.**

CASE NO. 2:13-cv-01314

**COMPLAINT FOR
DETERMINATION OF
REASONABLE AMOUNT OF
ATTORNEY'S FEE**

[JURY DEMAND]

18 **I. PARTIES**

19 1.0 Plaintiff RHEGAN PATRICK is a person of the full age of
20 majority, a citizen of Canada and a resident of West Vancouver, British
21 Columbia.
22

23 1.1 Plaintiff GRIFFIN PATRICK is a person of the full age of
24
25

1 majority and a resident of Spring, Texas.

2 1.2 Defendant JAMES S. ROGERS is a person of the full age of
3 majority, domiciled in Seattle, Washington. Defendant Rogers is an
4 attorney who practices law as a sole proprietorship doing business as Law
5 Office of James S. Rogers.
6

7
8 **III. JURISDICTION AND VENUE**

9 2.0 Jurisdiction is proper in this Court pursuant to 28 USCA
10 §1332(a) because complete diversity exists between the Plaintiffs and
11 Defendant, and the amount in controversy exceeds \$75,000 exclusive of
12 interest and costs.
13

14 2.1 Venue is proper in this Court pursuant to 28 USCA
15 §1391(b)(1) and/or (2).
16

17 **III. FACTS**

18
19 3.0 The National Championship Air Races take place each
20 September near Reno, Nevada, organized by the Reno Air Racing
21 Association ("RARA"). During the 2011 Reno Air Races, a vintage
22 aircraft crashed causing 11 deaths (including the pilot) and 69 injuries.
23
24
25

1 Wendy Hewitt, age 56, was one of those killed. Her husband, George
2 Hewitt also died in the crash. Wendy's adult children, daughter Rhegan
3 and son Griffin, survived her. Rhegan and Griffin are the plaintiffs in this
4 case.
5

6 3.1 On information and belief, RARA acknowledged, soon after
7 the September 2011 Rena Air Race disaster, that it did not dispute liability
8 arising out of the events that killed the mother of Rhegan and Griffin.
9

10 3.2 Plaintiff Rhegan Patrick, individually, entered into a
11 Contingent Fee Agreement with Defendant Rogers on January 20, 2012.
12 Rhegan's fee agreement, drafted by Mr. Rogers, provides for a 25%
13 contingency fee but also expressly provides that "Client...may petition the
14 court for a determination of the reasonableness of the Attorneys' fee."
15

16 3.3 On or about January 25, 2012, Rhegan was named "Special
17 Administrator" of her mother's estate in Arizona, and authorized to
18 undertake all acts necessary to pursue a wrongful death claim on behalf of
19 the Estate. However, there is no contingent fee agreement between
20 Rhegan, in her capacity as representative of the Estate, and Mr. Rogers.
21
22
23
24

1 3.4 Nevada law provides that "the heirs of the decedent and the
2 personal representatives of the decedent may each maintain an action for
3 [wrongful death] damages." Nev. Rev. St. 41.0185(2).
4

5 3.5 Plaintiff Griffin Patrick did *not* enter into any contingent fee
6 agreement with Defendant Rogers. Defendant Rogers nevertheless
7 undertook representation of Griffin in connection with his claims against
8 the RARA Compensation Fund without having entered into a written fee
9 agreement, or even having submitted a fee agreement to Griffin for
10 approval.
11

12 3.6 On information and belief, Defendant Rogers is an
13 experienced trial attorney who, prior to January 20, 2012, knew or
14 reasonably should have known that the claims of Griffin and Rhegan
15 Patrick would be resolved through creation of a settlement and/or
16 compensation fund, as is common in aviation disaster cases in which
17 liability is not disputed, without the need for extensive or protracted
18 discovery (*e.g.*, depositions) and/or litigation. Defendant Rogers did not
19 disclose that knowledge to Rhegan prior to her execution of the Contingent
20
21
22
23
24
25

1 Fee Agreement with Mr. Rogers.

2 3.7 In early-to-mid 2012, the exact date being unknown to
3
4 Plaintiffs, insurers and other potentially liable parties involved created the
5 "Reno Air Racing Association Accident Compensation Fund Program" as
6 an "economical, efficient and timely alternative to litigation...for allocation
7 and distribution of funds available to compensate spectators (or legal heirs
8 of a deceased spectator)..." The Fund consisted of approximately \$77MM.
9 The Fund established a "protocol" for resolution of claims, and required the
10 claimant's release of claims and participation in a "point allocation" system
11 determinative of the claimant's award.

12 3.8 By approximately November 14, 2012, Rhegan and Griffin
13 had enrolled in the Compensation Fund. The Claim Form is not
14 complicated. Indeed, the Fund itself explains that "[y]ou do not need to
15 hire a lawyer to submit a claim to the RARA Compensation Fund," and an
16 associate lawyer in Mr. Rogers' office filled out the form with Rhegan.
17 Documentation submitted in support of the Claim was also minimal,
18 including a written statement describing the extraordinarily close family
19
20
21
22
23
24
25

1 relationship among Wendy and her children, a short video montage of
2 photographs, and a few other, miscellaneous documents.

3
4 3.9 The Fund rejected Rhegan and Griffin's claim for their
5 mother's economic loss because she was semi-retired at the time of her
6 death. Rhegan and Griffin appealed, seeking \$388,572 in economic losses;
7 however, the Fund also rejected their appeal. (Mr. Rogers' office had
8 decided not to file Wendy's income tax information in support of the appeal
9 on economic losses).

10
11
12 3.10 The extent of Mr. Rogers' work between January 20, 2012 and
13 November 14, 2012 remains undocumented and uncertain. Mr. Rogers
14 generally does *not* maintain contemporaneous time records and did *not*
15 maintain any contemporaneous time records relative to his representation
16 of Rhegan and Griffin.

17
18
19 3.11 Less than two months later, on January 11, 2013, the
20 Compensation Fund issued its award to Rhegan and Griffin. The
21 Compensation Award was delivered to Mr. Rogers on a date after January
22 11, 2013.

1 3.12 On or about January 16, 2013, Mr. Rogers sent an initial
2 accounting to Rhegan and Griffin and asserted an attorney fee claim in the
3 amount of \$521,014.80.
4

5 3.13 On information and belief, Mr. Rogers had entered into a co-
6 counsel agreement with a Nevada law firm, pursuant to which he agreed to
7 pay the Nevada law firm 10% of his gross fee recovery. However,
8 Defendant Rogers had not complied with Washington RPC 1.5(e) in
9 connection with his fee-sharing agreement. The \$521,014.80 fee claimed
10 by Mr. Rogers included the 10% fee that Mr. Rogers proposed to deliver to
11 his co-counsel.
12
13
14

15 3.14 The RARA Compensation Fund has also held back funds
16 from the claimants, including Rhegan and Griffin, which will be allocated
17 to the approved claimants in September 2013 and September 2014, based
18 on the existing "point" allocation system. There is also a claim pending
19 against the pilot's estate (the "Leeward Estate"), which Rhegan and Griffin
20 expect will be resolved and allocated in a similar manner to the existing
21 fund. Rhegan and Griffin do not know the amounts they may receive in
22
23
24
25

1 these future distributions. Defendant Rogers also claims a fee out of those
2 future recoveries.

3
4 3.15 Plaintiffs and Defendant entered into a Tolling Agreement,
5 effective February 21, 2013, relative to Plaintiffs' request for a
6 reasonableness determination in respect to Mr. Rogers' fee. This Tolling
7 Agreement has remained in effect up to and including the date of the filing
8 of this Complaint.
9

10
11 3.16 Considering all of the facts and circumstances, Plaintiffs
12 allege on information and belief that the Defendant Rogers's claimed
13 contingent fee, in the amount of 521,014.80, plus an additional 25% of all
14 future recoveries, is excessive.
15

16 IV. CAUSE OF ACTION

17
18 4.0 Plaintiff Rhegan Patrick is entitled to a reasonableness
19 determination relative to Mr. Rogers' contingent fee, including pursuant to
20 RCW 4.24.005, and/or the Contingent Fee Agreement between Rhegan
21 Patrick and Mr. Rogers, and/or RPC 1.5(a).
22

23 4.1 Plaintiff Griffin Patrick is entitled to a determination that Mr.
24

1 Rogers may either not charge him any fee due to his non-compliance with
2 RPC 1.5(c), or may only charge him his reasonably and customary hourly
3 fees for those amounts of time that Mr. Rogers can prove he actually
4 incurred on behalf of Griffin Patrick, only (considering that Mr. Rogers is
5 being compensated by Rhegan Patrick for all time Mr. Rogers incurred
6 while jointly prosecuting the claims of both Rhegan and Griffin).
7

9 4.2 In the alternative, in the event that the Court does *not* limit Mr.
10 Rogers' fees from Plaintiff Griffin Patrick to his reasonable and customary
11 hourly fees applied to only those amounts of time incurred only for the
12 benefit of Griffin, then Griffin is also entitled to a reasonableness
13 determination relative to Mr. Rogers' fees, including pursuant to RCW
14 4.24.005 and/or RPC 1.5(a).
15

17 4.2 Plaintiffs are further entitled to a determination whether the
18 fee-splitting agreement between Mr. Rogers and the Nevada co-counsel
19 that he retained complies with RPC 1.5(e) and, if not, whether Mr. Rogers'
20 fees should be reduced due to Mr. Rogers' non-compliance with RPC
21 1.5(e).
22
23
24

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

WHEREFORE Plaintiffs pray that the Court grant Plaintiffs the following relief:

- 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

equitable.

DATED: July 8, 2013.

WAID LAW OFFICE

/s/ Brian J. Waid
BRIAN J. WAID
WSBA No. 26038
JESSICA M. CREAGER
WSBA No. 42183
Attorneys for Plaintiffs